I am Dr. Elmer Huerta, incoming President of the American Cancer Society and Director of the Cancer Preventorium at the Washington Hospital Center. As a physician and researcher who specializes in cancer prevention and screening among the medically underserved, I see firsthand the toll tobacco takes on our country and the benefits of prevention in combating cancer. On behalf of the more than 28 million volunteers and supporters of the American Cancer Society and its sister advocacy organization the American Cancer Society Cancer Action Network, I thank you, Mr. Chairman, and your Committee colleagues for inviting me to testify today regarding the need for providing the Food and Drug Administration with meaningful authority over tobacco products as is found in S. 625 introduced by you, Senator Kennedy, and Senator John Cornyn.

As you know, the American Cancer Society is the nationwide, community-based voluntary health organization dedicated to eliminating cancer as a major health problem by preventing cancer, saving lives and diminishing suffering from cancer, through research, education, advocacy and service. In 2001, the Society created its sister organization, the American Cancer Society Cancer Action Network, referred to as ACS CAN, to more aggressively fight cancer through advocacy. Conquering cancer is as much a matter of public policy as scientific discovery, so building on the more than 90 years of excellence of the Society, ACS CAN serves as the lobbying arm and force necessary to push for legislative changes at the local, state and national levels.

The Society and ACS CAN have established aggressive goals to reduce cancer incidence and mortality – goals that we are pursuing with the cooperation and collaboration of the public, private, and non-profit sectors. We know from data and scientific evidence that one of the key steps to achieving an accelerated reduction in cancer incidence and mortality is tobacco control -- especially when it comes to children -- through meaningful regulation of tobacco products and effective cessation programs that will help those currently addicted to quit.

The need for FDA regulation of tobacco is great. We're talking about an industry that sells and markets deadly products and does so without any accountability. In fact, tobacco products are the only consumable product not regulated by the FDA. This leaves consumers uninformed about tobacco products' ingredients and health dangers.

The benefits of FDA regulation are clear. FDA regulation will help us to combat the vicious marketing practices of a deceptive industry that has preyed upon our children, minorities, and existing smokers who are desperately trying to kick their habit. FDA regulation will protect these groups, and in the process it will help reduce what can only be considered disturbing disparities in cancer rates and death rates. Stated simply, FDA regulation will save lives.

We are at a huge disadvantage when it comes to combating the deceptive marketing practices and false health claims made by the tobacco industry. Mr. Chairman, over the years, the public health community and the public at large have worked hard at all levels of society to combat this nation's deadly addiction. However, our efforts simply have not been strong enough. Voluntary guideline promises by industry have not worked and

cannot be enforced. We all agree, federal regulation of tobacco is absolutely necessary and now is the time for Congress to act.

Under your leadership, we have come close several times to passing this crucial piece of legislation. In 1998, we took a small step closer to regulation of the tobacco companies with the Master Settlement Agreement. The Agreement set a promise from the tobacco industry to the States that marketing to children would cease. But it was just a promise. The restrictions on cigarette marketing to children outlined in the MSA do not sufficiently restrict the companies' marketing practices. Instead, the MSA has changed the companies' public relations strategies so that the deceptive practices aimed at creating a new generation of smokers continues. In an attempt to burnish their public image as "good partners" seriously working to implement the spirit of the MSA, they have even initiated ineffective and sometimes harmful youth anti-tobacco campaigns.

Despite the MSA provision that the tobacco companies cannot "take any action, directly or indirectly, to target youth in the advertising, promotion or marketing of tobacco products," tobacco companies' marketing and promotion continue have a direct impact on children. There are five ways in which the MSA is not strong enough. First, the MSA did not place any restrictions on advertising in print media, such as magazines. In fact, cigarette advertising in youth-oriented magazines actually increased in the two years after the MSA. It took R.J. Reynolds to be found guilty of directly marketing to children in 2002 before they decreased their magazine advertising that reached children. Second, the MSA did not limit or restrict in-store tobacco advertising. Knowing that 75 percent of teens visit a convenience store at least once a week, the cigarette companies increased their advertising and promotions in and around retail stores, such as convenience stores. Third, while the MSA banned large billboards, it permitted outdoor or outdoor-facing signs up to 14 square feet on the properties of businesses that sell tobacco products, even if those properties are right next to schools or playgrounds. Fourth, the MSA lacks a quick and effective mechanism for identifying violations and compelling industry compliance. And finally and most importantly, the MSA did not put into place an enforceable system and comprehensive set of rules to restrict or eliminate all the major tobacco advertising and marketing tools that have the greatest influence on our children.

Because the tobacco companies remain unregulated and unchecked, they have been able to circumvent the limited advertising restrictions placed on them by the 1998 Master Settlement Agreement, continuing to target children and have even increased their marketing expenditures by 125 percent since the MSA. Worse still, the tobacco industry is spending more than ever before to market its deadly products. In 2003, the most recent year data are available, the cigarette companies spent $15.1 billion, or more than $41 million a day, on marketing their products. Again and again, the tobacco companies have proven to us they will manipulate the system to encourage the uptake of smoking and keep current smokers from quitting by introducing new products and using creative marketing tactics, particularly aimed at children and other vulnerable populations. FDA regulation of tobacco is vital to control this rogue industry and to protect our most vulnerable members of society.

This is an industry that cannot be trusted. Last year, in the Depart of Justice case against the tobacco companies, U.S. District Court Judge Gladys Kessler concluded "Knowing that advertising and promotion stimulated the demand for cigarettes, Defendants used their knowledge of young people, gained through tracking youth behavior and preferences, in order to create marketing campaigns (including advertising, promotion, and couponing) that would appeal to youth, in order to stimulate youth smoking initiation and to ensure that young smokers would select their brands." The tobacco industry has demonstrated time and again that, if left to its own devices, it will falsely market its deadly products to our children, portraying this deadly addiction as glamorous and cool. In its March 2000 ruling, the Supreme Court found that tobacco use is "one of the most troubling public health problems facing our nation." The industry continues to lure in new customers through its seductive advertising campaigns and price discounting, which has been proven to greatly affect the uptake of smoking by children.

Researchers and the tobacco companies alike know how great a role marketing plays in children's uptake of tobacco use. Numerous studies have shown that children are three times more sensitive to tobacco advertising than adults. The most popular cigarettes among children are the most heavily advertised brands – Marlboro, Camel and Newport. Research tells us that children are more likely to be influenced to smoke by cigarette marketing than by peer pressure and one third of tobacco use experimentation by children is attributable to tobacco advertising and promotions. The tobacco companies know this and use this information to target children.

The most recent effort by the tobacco industry to entice children into smoking has been the introduction of candy flavored cigarettes into the market in 2004. R.J. Reynolds introduced flavors such as Twista Lime and Winter MochaMint, using colorful graphics and "scratch and sniff" marketing tactics. In 2005, the states' Attorneys General asserted that R.J. Reynolds had violated the 1998 Master Settlement Agreement by targeting youth through its advertising and promotion of flavored cigarettes. As stated by Attorney General Eliot Spitzer, "Selling candy, fruit and sweetened alcohol flavored cigarettes is downright irresponsible, given the appeal of these products to youth. This result reflects a recognition that the Attorneys General, together with the public health community, will not tolerate Reynolds' shameful ploys to introduce our children to smoking and to lure them into a lifetime of addiction to its deadly products." This once again reminds us of the deceptive tactics the industry will continue to make to attract children to smoking and the desperate need for FDA regulation. It's a shameful reality, but it's just that – reality.

The industry also specifically targets minority youth. Brown and Williamson introduced its own version of flavored cigarettes as part of its Kool Mixx campaign. The Kool Mixx campaign focused its marketing images around music and hip-hop, which is particularly appealing to African American and Latino youth. The Kool Mixx campaign included 14 music concerts around the country and a DJ competition, as well as special-themed packs of cigarettes with cartoons displayed on them. In addition, Brown and Williamson placed advertisements in publications popular with Latino youth, including *Latina* and *Cosmoplitan en Espanol*. The slogans used in these ads included "It's about old world class and new world style" and "It's about pursing your ambitions and saying connected

to your roots," aimed at appealing to the aspirations of ethnic minorities. The states' Attorneys General found the industry in violation of the 1998 Master Settlement Agreement, by using the Kool Mixx campaign to target youth, proving once again that the tobacco industry is incapable of regulating itself.

Brown and Williamson is not alone. Other tobacco companies have also specifically targeted minority populations. In 1999 and 2000, Philip Morris started a magazine ad campaign for Virginia Slims using the slogan "Find Your Voice." The ads targeted women and girls, featuring Latinas and other ethnic women, suggesting that independence and allure could be found by smoking. As recent as two weeks ago, R.J. Reynolds introduced a new version of its Camel brand cigarettes, specifically designed to appeal to women and girls. The pack of cigarettes is laced in hot pink and teal and the ads include slogans such as "light and luscious." Amazingly, the industry is increasing its attractiveness to women and girls at a time when lung cancer is the number one cancer killer of women.

FDA regulation presents our country with an historic opportunity to protect all Americans from tobacco addiction, especially our children. This legislation is a critical step towards reducing health care disparities, as tobacco-related cancers remain disproportionately high among lower-income and minority communities. Because these groups have been repeatedly targeted by the tobacco industry, they unfairly carry a greater weight of the health and economic burden tobacco has on our nation. I know from my experience as a doctor that prevention is effective at improving the health and well-being of people, but that minority groups and low-income populations do not have the same access to health programs, such as cessation services, as others do. This once again gives the tobacco industry the unfair advantage. Tobacco use is the most preventable cause of death and disease in this country and granting the FDA authority over tobacco products is the key prevention measure that is missing in this nation in order to reduce tobacco's deadly toll.

Some minority and ethnic groups and the medically underserved suffer from a disproportionate burden of cancer and disease. Similarly, large differences in tobacco use exist in the United States. For example, currently, smoking prevalence is 37.5 percent among American Indian/Alaska Native men, 26.7 percent among African American men, and 24 percent among white men. This leads to marked differences in tobacco-related cancer deaths among different groups within the population. This year, it is expected that the rate of lung and bronchus cancer deaths for white males will be 73.8 per 100,000 while for African Americans it will be 98.4 per 100,000. Lung cancer death rates for women have increased by at least 150 percent in the last two decades alone and have yet to go down.

We have made real progress on the cancer front. For the second straight year, we have seen a decrease in cancer deaths large enough to outpace the aging and growth of the U.S. population. These declines can be attributed in part to smoking cessation and other preventive efforts, such as earlier and better cancer screenings. Mortality rates from lung cancer in men decreased by about 1.9 percent per year from 1991 and 2003. We have also seen a decrease in the incidence of lung cancer in men, from a high of 102 cases per 100,000 in 1984 to 78.5 cases in 2003.

Despite the significant gains we have seen in decreasing overall cancer incidence and mortality rates, approximately 1.4 million Americans still will be diagnosed with cancer this year and more than 550,000 will lose their battle with the disease, costing more than $206 billion in direct and indirect health care costs. While we are encouraged by the overall decreased mortality from cancer, we have to recognize that death rates from lung cancer in women have not yet declined.

The health consequences from tobacco go beyond cancer and have an enormous health and economic impact on our nation. Tobacco use is responsible for nearly one in five deaths in the United States – a needless and tragically preventable loss of more than 400,000 American lives each year. Tobacco kills more Americans than AIDS, drugs, alcohol, car accidents, homicides, suicides, and fires combined. More than 30 percent of all cancer deaths, 80 percent of chronic obstructive pulmonary disease deaths, 21 percent of coronary heart disease deaths and 18 percent of stroke deaths are attributable to smoking and tobacco use. And sadly, we are starting to see the progress we've made in reducing youth smoking initiation slip away. Overall, tobacco costs our nation over $96 billion in direct health care costs annually, and an additional $97 billion in lost productivity.

While we have made progress on some fronts of the fight against tobacco addiction, the enormous number of preventable deaths from tobacco tells us how important FDA regulation of these products is now. Deaths from tobacco can be prevented if our nation seriously and comprehensively addresses tobacco and makes a long-term investment in a sustained campaign to prevent tobacco-related disease and death, which includes federal legislation to regulate an industry that has evaded regulation for decades.

This legislation introduced by you, Mr. Chairman, and Senator Cornyn would provide the FDA with the authority and resources to effectively regulate the manufacturing, marketing, labeling, distribution and sale of tobacco products. The FDA would then be authorized to restrict tobacco advertising and promotions, especially those targeted at children, including banning candy-flavored cigarettes. It would also require the tobacco companies to disclose the ingredients of tobacco products and smoke constituents. The FDA would have the authority to prohibit unsubstantiated health claims about so-called "reduced risk" products, and require larger and more informative health warnings on tobacco products, among other measures.

The American Cancer Society and ACS CAN hope the introduction of your and Senator Cornyn's bill will encourage Congress to act now to grant the FDA authority to stop the tobacco industry's harmful and deceptive practices, before more children become addicted and more people die prematurely because of tobacco-caused disease. The Society and ACS CAN urge policy makers to take action to ensure that disparities in tobacco use and the associated adverse health outcomes are addressed. We have prioritized the reduction and elimination of the unequal burden of cancer as a top nationwide priority. As part of meeting this challenge, the Society is working at all levels of the organization to advance policies and programs that work to reduce health disparities among minority and ethnic populations and the underserved.

Mr. Chairman, on behalf of the Society and ACS CAN's nationwide volunteers and staff, again thank you for your ongoing leadership on tobacco issues and for providing us this opportunity to discuss with you and your colleagues the importance of federal regulation of tobacco products. The need for FDA authority over tobacco products has never been greater. The nation's deadliest consumer product must not continue to be unregulated. Mr. Chairman and Members of the Committee, we look forward to working with you and your colleagues to address this issue. We stand ready to join with you to protect our children from tobacco use and to help those currently addicted to quit.